

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JAMES H. MCCLENTON

§

v.

§

C.A. NO. C-06-322

MCCONNELL UNIT

§

§

§

§

ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL

This is a civil rights action filed by a state prisoner pursuant to 42 U.S.C. § 1983. Plaintiff's motion for appointment of counsel is pending. (D.E. 11).

No constitutional right to appointment of counsel exists in civil rights cases. Wendell v. Asher, 162 F.3d 887, 892 (5th Cir. 1998); Akasike v. Fitzpatrick, 26 F.3d 510, 512 (5th Cir. 1994) (per curiam). A district court is not required to appoint counsel unless "exceptional circumstances" exist. Cupit v. Jones, 835 F.2d 82, 86 (5th Cir. 1987) (quoting Jackson v. Dallas Police Dep't, 811 F.2d 260, 261 (5th Cir. 1986) (per curiam)). Among the factors that the Court should consider are: "(1) the type and complexity of the case; (2) whether the indigent is capable of adequately presenting his case; (3) whether the indigent is in a position to investigate adequately the case; and (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence. The court should also consider whether appointed counsel would aid in the efficient and equitable disposition of the case." Jackson, 811 F.2d at 262 (citing Ulmer v. Chancellor, 691 F.2d 209, 213 (5th Cir. 1982)); accord Norton v. Dimanza, 122 F.3d 286, 293 (5th Cir. 1997).

Plaintiff has indicated that he wants to proceed in forma pauperis in this action, (D.E. 6), but has failed to file an application to proceed in forma pauperis with a current inmate trust account statement. Without such an application, this action may not proceed. 28 U.S.C. § 1915(a)(2). Next,

his complaint must be screened pursuant to 28 U.S.C. § 1915A. This screening has not happened because of plaintiff's failure to properly file an application to proceed in forma pauperis.

Accordingly, plaintiff's motion for appointment of counsel, (D.E. 11), is premature and is hereby DENIED without prejudice.

ORDERED this 18th day of October 2006.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE